

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL DUANE HUNTER

No. CV-13-5020-EFS

Plaintiff,

v.

10 MICHELLE G. FEREBAUER, ROBERT
11 FEREBAUER, husband and wife and
12 their marital community, PATRICK
13 T. ROACH, dba ROACH LAW OFFICES,
14 LLP, and/or ROACH AND BISHOP LLP,
15 LAWRENCE LINCOLN and PATRICIA
16 MCKAY, husband and wife and their
17 marital community, GREGORY P.
18 HAWKINS, both individually and
19 dba, HAWKINS AND SORESON, LC,
20 and/or GREGORY P. HAWKINS P.S..

ORDER ACCEPTING FIRST AMENDED
COMPLAINT AND OVERLENGTH REPLIES,
AND VACATING DEFAULT

Defendants.

Before the Court, without oral argument, are several motions: 1) Plaintiff Michael Hunter's Motion for Acknowledgement of First Amended Complaint or for Leave to Amend, ECF No. 34; 2) Defendant Gregory Hawkins' Motion to File Overlength Reply Briefs on Rule 12(b)(6) Motions, ECF No. 39, and related Motion to Expedite Hearing, ECF No. 40; and 3) Defendant Michelle and Robert Ferebauer's (collectively, "Ferebauer Defendants") Motion to Vacate Clerk's Order of Default, ECF No. 44. After reviewing these materials and relevant authority, the Court is fully informed. The Court addresses each motion in turn.

1 First, the Court finds good cause to acknowledge that
2 Plaintiff's First Amended Complaint, ECF No. 22, was filed on April
3 22, 2013, albeit it was unsigned by the filing attorney. On April 24,
4 2013, the Court entered an Order cautioning Plaintiff's counsel that
5 the First Amended Complaint was unsigned in violation of Federal Rule
6 of Civil Procedure 11(a) and, therefore, struck the First Amended
7 Complaint. ECF No. 29. The next day Plaintiff's counsel filed a
8 praecipe containing a fully-signed First Amended Complaint, ECF No.
9 31. The Court accepts the praecipe and permits it to substitute for
10 the timely-filed April 22, 2013 complaint. Accordingly, Plaintiff's
11 motion is granted.

12 Second, the Court finds good cause to grant Defendant Hawkins'
13 Motion to File Overlength Reply Briefs on Rule 12(b)(6) Motions, ECF
14 No. 39, and related Motion to Expedite Hearing, ECF No. 40. Local
15 Rule 7.1(e)(1) permits only ten pages for a reply. Given the filing
16 of Plaintiff's First Amended Complaint, the Court finds good cause to
17 accept Defendant Hawkins' nineteen-page Reply in Support of Motion to
18 Dismiss Under Rule 12(b)(6) for Failure to State a Claim, ECF No. 32,
19 and nineteen-page Reply in Support of Motion to Dismiss Under Rule
20 12(b)(2) for Lack of Personal Jurisdiction, ECF No. 33.

21 Third, the Court grants the Ferebauer Defendants' Motion to
22 Vacate Clerk's Order of Default, ECF No. 44. At the time Plaintiff
23 filed the Motion for Default, the Court had not yet accepted
24 Plaintiff's First Amended Complaint and thus the controlling complaint
25 was the February 21, 2013. Accordingly, entry of default was
26 appropriate because the Ferebauer Defendants had not filed a

1 responsive pleading within twenty-one days of the February 21, 2013
2 Complaint. With the acceptance of the First Amended Complaint, the
3 Court finds it necessary to set aside the default. The Ferebauer
4 Defendants have twenty-one days since service of the First Amended
5 Complaint to respond, unless they timely waive service. Fed. R. Civ.
6 P. 12(a)(1)(A).

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. Plaintiff's Motion for Acknowledgement of First Amended
9 Complaint or for Leave to Amend, **ECF No. 34**, is **GRANTED**.

10 The nunc pro tunc First-Amended-Complaint praecipe is
11 considered filed on April 22, 2013.

12 2. Defendant Hawkins' Motion to File Overlength Reply Briefs
13 on Rule 12(b)(6) Motions, **ECF No. 39**, and related Motion to
14 Expedite Hearing, **ECF No. 40**, are **GRANTED**.

15 3. The Ferebauer Defendants' Motion to Vacate Clerk's Order of
16 Default, **ECF No. 44**, is **GRANTED**.

17 4. The Clerk's Order of Default, **ECF No. 43**, is **VACATED**.

18 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
19 Order and provide copies to counsel.

20 **DATED** this 14th day of May 2013.

21
22

s/ Edward F. Shea
23 EDWARD F. SHEA
24 Senior United States District Judge
25
26